IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2006

C O R A M

THE HONOURABLE Mr.JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No.4556 of 2006
and
W.P.M.P.No.4925 of 2006

G.Premkumar .. Petitioner

Vs

1.The Inspector General of Registration
Office of the Inspector General of
Registration,
No.120,Santhome High Road,
Chennai-600 028.

2.The Sub Registrar of T.Nagar
Office of the Sub Registrar of T.Nagar,
Saidapet, Chennai-600 015. ...Respondents

Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in MM No.25288/No.1/2005 dated 16.5.2005 on the file of the first respondent and quash the same and direct the first respondent to consider the objections filed by the petitioner.

For petitioner ... Mr.P.Shivakumar
For respondents ... Mr.E.Sampathkumar,
Government Advocate.

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Mr.E.Sampath Kumar, learned Government Advocate takes notice for the respondents.

2. The petitioner is aggrieved against the order of the first respondent dated 16.5.2005 rejecting the petitioner's application for condoning the delay in filing the appeal under Section 47(A)(5) of the Indian Stamp Act on the ground that the first respondent has no power to condone the delay in filing the appeal which was beyond two

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months time. The petitioner was aggrieved against the order of the second respondent as regards the levy of difference in Stamp Duty in relation to the registration of a sale deed in respect of the property covered by Document No.1680 of 1999 in Serial No.224 of 2000 in the office of the second respondent. The petitioner is stated to have filed an appeal before the first respondent which was beyond two months period prescribed under Rule 9 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The said rejection came to be made by the first respondent on 28.3.2003. Thereafter, the petitioner preferred a representation on 4.2.2005. Thereafter, petitioner filed an application on 20.4.2005 seeking for the condonation of delay of eight days in filing the appeal under Section 47(A)(5) of the Indian Stamp Act. The said application has now been rejected by the first respondent by the impugned order dated 16.5.2005 on the sole ground that the first respondent has no power to condone the delay in filing an appeal.

3. Under Section 47(A)(5) of the Indian Stamp Act, the first respondent has been invested with the powers to entertain an appeal by any person aggrieved by the order of the Collector passed under Sub Section 2 or Sub Section 3 of Section 47 of the Stamps Act. Under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (hereinafter called the Rules), procedure has been prescribed as to how any appeal should be filed under Section 47(A)(5) and under Rule 10, the manner in which such an appeal should be disposed of by the appellate authority has also been stipulated. Under Rule 11, it is specifically mentioned that the appellate authority should hear the appellant and receive any evidence adduced on his behalf and also entertain oral evidence both on the side of the aggrieved person as well as on the side of the Collector. That apart, under Rule 11(a), the appellate authority has also been invested with the powers to call for any information or record from any public office, officer or authority under the Government or any local authority; and also examine and record statements from any member of the public office or authority under the Government or the local authority, apart from making inspection of the property after due notice to the parties concerned.

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4. It is only thereafter, under Rule 12, it is mentioned as to how the appellate authority should endeavor to pass an order after considering all the evidence adduced and representations made on behalf of the appellant and the Collector and also after examining the records of the case. Under Rule 14(4), apart from enabling the appellate authority to provide enough opportunity to the parties concerned for hearing the appeal by granting necessary adjournments, it is also provided that provisions of the Code of Civil Procedure, 1908 relating to the procedure to be followed by the appellate authority in appeals against the orders of the civil court as far as may be, apply to appeals under sub-section 5 of Section 47(A) which should be followed in respect of matters not provided under the Rules. Under Rule 15, the manner of service of notice and orders to the parties have been set out.

5. Thus, a conspectus reading of Section 47(A) in so far as it relates to the powers of the appellate authority, read along with the above referred to Rules makes it abundantly clear that the appellate authority discharging its functions in the above referred to provisions has all the trappings of a Court. In other words, I am of the confirmed view that the appellate authority virtually discharges functions which are more or less analogous to that of a regular court while disposing of an appeal under Section 47(A)(5) of the Act.

6. Therefore, it will have to be necessarily held that even though there is no provision under the Stamp Act and the Rules framed thereunder specifically providing for condonation of delay in filing an appeal beyond two months period prescribed under Rule 9, yet, by virtue of Section 5 of the Limitation Act, the first respondent as an appellate authority is fully empowered to condone the delay in the event of the parties furnishing sufficient reasons explaining the delay involved in filing the appeal.

7. The decision of the Honourable Supreme Court reported in P.SARATHY VS. STATE BANK OF INDIA (2000)5 SCC 355 is apposite on this point, wherein, in respect of an Appeal under the Tamil Nadu Shops and Establishments Act preferred by a person employed in a Bank, the Hon'ble Supreme Court after considering Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 held that the appellate authority under the said provision is having all the trappings of a court. The Hon'ble Supreme Court therefore held that the appellant therein was entitled to invoke Section 14(2) of the Limitation Act in order to cover the period of delay in filing the suit for

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challenging the order of termination. Paragraphs 9 and 12 of the said decision is relevant for our present purpose which reads as under:-

> "....9. The Deputy Commissioner of Labour (Appeals), Madras, which is the authority constituted under the Tamil Nadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41 (3), the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour(Appeals) may not be a "civil court" within the meaning of the Code of Civil Procedure but it is definitely a "court".
>
> 10.....
>
> 11.....
>
> 12. It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court' but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any authority or tribunal having trappings of a court would be a"court" within the meaning of this section. ..."

8. It is also relevant to note that like Section 14(1) of the Limitation Act, Section 5 of the Limitation Act also refers to the appellate forum as a "Court". Thus whatever stated with regard to the application of Section 14 of the Limitation Act 'mutatis mutandis' will apply to Section 5 as well. Applying the above said ratio to the case on hand, I hold that the first respondent is also fully empowered to invoke Section 5 of the Limitation Act while dealing with an appeal filed under Section 47(A)(5) of the Stamp Act and depending upon the explanation offered by the concerned appellant, the first respondent can pass appropriate orders in such applications either for condoning the delay or rejecting the same.

9. In the light of my above said conclusion, while setting aside the order impugned in this writ petition, the first respondent is directed to entertain the petitioner's application for condoning the delay, as one filed under Section 5 of the Limitation Act and dispose of the same on

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merits. In the said application, the petitioner claims that because he was a minor represented by his mother and natural guardian and that his mother was laid down with jaundice he could not file the appeal in time and that caused a delay of eight days in filing the said appeal. Such reasons offered by the petitioner appears to be bonafide and convincing. Therefore, the first respondent shall pass appropriate order in the said application of the petitioner and decide whether the petitioner's appeal should be entertained or not. However, in the light of the fact that the document was registered in the year 1999, the first respondent is directed to pass appropriate order within six weeks from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

nvsri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

1.The Inspector General of Registration
Office of the Inspector General of
Registration,
No.120,Santhome High Road,
Chennai-600 028.

2.The Sub Registrar of T.Nagar
Office of the Sub Registrar of T.Nagar,
Saidapet, Chennai-600 015.

+ one cc to the Govt. Pleader sr no. 7930
+ one cc to Mr. P. Shivakumar, Advocate sr no. 7574

SSV(CO)
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